

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, as Trustee of the Estate of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Petitioner,

vs.

M. P. FREEMAN, as Trustee of the Estate of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,

Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved
July 1, 1898, to Revise, in Matter of Law, a Certain
Order of the United States District
Court for the District
of Arizona.

Filed

JAN 20 1916

F. D. Monckton,
Clerk.

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

Petition to Revise in Matter of Law.

To the Honorable, the Judges of the Circuit Court
of Appeals, of the Ninth Circuit of the United
States:

Your petitioner, John H. Martin, Trustee in Bankruptcy of the estate of the Imperial Copper Company, a corporation, bankrupt, respectfully shows:

That he resides at the city of Tucson, Pima County, Arizona, within said district, and is trustee in bankruptcy of the estate of the Imperial Copper Company, a corporation, bankrupt, a creditor of the Southern Arizona Smelting Company, a corporation, bankrupt, which was so adjudicated by the United States District Court for the District of Arizona, on the 29th day of September, A. D. 1914.

That heretofore, on January 23, 1912, M. P. Freeman, trustee in bankruptcy of said Imperial Copper Company, a corporation, bankrupt, and the predecessor of your petitioner, instituted an action in the then District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, against the Southern Arizona Smelting Company, a corporation, to recover from the said smelting company the sum of \$26,887.71, upon an indebtedness then due and owing from the said smelting Company to the said estate the *the* said Imperial

Copper Company, a corporation, bankrupt.

That thereafter, on June 17, 1914, the said M. P. Freeman, as trustee in bankruptcy of said Imperial Copper Company, a corporation, bankrupt, and as the predecessor of your petitioner as such trustee, in obedience to an order issued by this Court, caused to be issued in said action a writ of attachment and caused the same, on the 19th day of June, 1914, to be levied upon all of the property of said smelting company situate in Pinal County, Arizona.

That thereafter, on July 1, 1914, said M. P. Freeman resigned as trustee in bankruptcy of said Imperial Copper Company, a corporation, bankrupt, and your petitioner was elected as such trustee to fill said vacancy, and was also substituted as plaintiff in said attachment proceedings in place of said M. P. Freeman.

That thereafter, and within four months of the levy of said attachment the said Southern Arizona Smelting Company filed in this court its voluntary petition in bankruptcy, and on the same day and without any notice to your petitioner was adjudicated a bankrupt upon said voluntary petition; and that thereafter, and on or about the —— day of ———, 1914, the said M. P. Freeman was elected trustee in bankruptcy of said Smelting Company.

That thereafter and on or about March 18, 1915, the said M. P. Freeman, as trustee in bankruptcy of said Smelting Company filed herein his certain petition; alleging among other things that at the time of the levy of said attachment the said Southern Arizona Smelting Company was insolvent, and praying

that an order be issued herein to show cause why your petitioner as trustee in bankruptcy of the said Imperial Copper Company, a corporation, bankrupt, should not be enjoined and restrained from further prosecuting said action in said State Court.

That on the said 18th day of March, 1915, the said District Court made an order directing your petitioner, as trustee of said Imperial Copper Company, a corporation, bankrupt, to appear upon the 3d day of April, 1915, at ten o'clock A. M., and show cause why said injunction should not be issued.

That thereafter and on or about March 31, 1915, your petitioner, as trustee in bankruptcy of said Imperial Copper Company, a corporation, bankrupt, filed herein his answer to said petition and order to show cause, and, among other things, denied that at the time of the levy of said writ of attachment or at the time of the filing of said voluntary petition in bankruptcy by the said smelting company and the said adjudication therein, or at any time, said smelting company was insolvent and alleged that at all of said times the said smelting company was solvent and that the aggregate of the property of said smelting company, exclusive of any property which it might have transferred, concealed or removed or attempted to conceal or remove with intent to defraud, hinder or delay its creditors, was and is, at a fair valuation thereof, sufficient in amount to pay its debts, and prayed for an order that the Court proceed to hear said matter and take evidence with reference to the question of the insolvency of said smelting company.

That thereafter said matter came on for hearing and, after argument by respective counsel, the same was submitted to the said District Court for its decision and judgment.

That thereafter, and on or about the 2d day of November, 1915, said District Court rendered its decision and directed that an order be entered granting the injunction prayed for by said M. P. Freeman, as trustee in bankruptcy of said smelting company, and staying the attachment proceedings in the said suit of John H. Martin as trustee in bankruptcy of the Imperial Copper Company, a corporation, bankrupt, against the Southern Arizona Smelting Company, a corporation, as above referred to.

That the said order was erroneous in matter of law in that:

1. The Court erred in holding in effect that the adjudication of bankruptcy of said smelting company upon the voluntary petition filed by it within four months of the levy of said writ of attachment dissolved or voided the attachment lien irrespective of whether or not said smelting company was solvent or insolvent at the time of the levy of said attachment or at the time of said adjudication made upon such voluntary petition.

2. The Court erred in holding that the adjudication of bankruptcy of the smelting company upon its voluntary petition was binding and conclusive upon petitioner, a creditor of said smelting company, and *res adjudicata* of petitioner's right to test the question of solvency or insolvency of the smelting company.

3. The Court erred in holding that petitioner was precluded, by reason of the adjudication so made in such voluntary petition, from contesting the question of solvency or insolvency of the smelting company.

4. The Court erred in holding that the question at issue was one of law and not one of fact to be determined upon evidence, to wit, whether or not at the time of the levy of the attachment or at the time of the adjudication the said smelting company was solvent or insolvent.

5. The Court erred in holding in effect that although the smelting company may have been solvent at the time of the levy of the attachment or at the time of the adjudication, that the attachment lien of petitioner was nevertheless dissolved.

6. The Court erred in denying to petitioner, a creditor of said smelting company, the right to test the question as to the solvency or insolvency of said smelting company at the time of the levy of said writ of attachment or at the time of such adjudication.

That certified copies of all that portion of the record pertaining to the proceedings and questions involved herein are on file herein, having been sent up to this Court by the clerk of the United States District Court for the District of Arizona, annexed to the petition for review of said matter heretofore filed by petitioner in said District Court.

WHEREFORE, your petitioner, feeling aggrieved because of such order, asks that the same may be reviewed in matter of law by your Honorable Court, as provided in Sec. 24-b of the bankruptcy

law of 1898, and the rules and practice in such case provided.

JOHN H. MARTIN, ..
Trustee in Bankruptcy of the Imperial Copper Com-
pany, a Corporation, Bankrupt, Petitioner.
FRANCIS M. HARTMAN,
E. F. JONES,
Attorneys for Petitioner.

State of Arizona,
County of Pima,—ss.

I, John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true, according to the best of my knowledge, information, and belief.

JOHN H. MARTIN,

Subscribed and sworn to before me this 1st day of December, A. D. 1915.

My commission expires Feb. 19, 1916.

[Seal] R. W. LANGWORTHY,
Notary Public, Pima County, Arizona.

[Endorsed]: No. 2697. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. John H. Martin, as Trustee of the Estate of Imperial Copper Company, a Corporation, Bankrupt, Petitioner, vs. M. P. Freeman, as Trustee of the Estate of Southern Arizona

Smelting Company, a Corporation, Bankrupt, Respondent. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Arizona.

Filed December 6, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, as Trustee of the Estate of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Petitioner,

vs.

M. P. FREEMAN, as Trustee of the Estate of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,

Respondent.

**TRANSCRIPT OF RECORD IN SUPPORT OF
PETITION FOR REVISION**

Under Section 24b of the Bankruptcy Act of Congress, Approved
July 1, 1898, to Revise, in Matter of Law, a Certain
Order of the United States District
Court for the District
of Arizona.

[Names and Addresses of Counsel.]

F. M. HARTMAN, Esquire, Tucson, Arizona.

EDWIN F. JONES, Esquire, Tucson, Arizona.

SELIM M. FRANKLIN, Esquire, Tucson, Arizona.

ELLINWOOD & ROSS, Bisbee, Arizona.

[1a*]

[Petition for Injunction to Stay Suit in State Court.]

*In the District Court of the United States, for the
District of Arizona.*

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

Your petitioner, M. P. Freeman, respectfully
shows:

I.

That Southern Arizona Smelting Company, a corporation, was duly adjudicated a bankrupt on the 29th day of September, A. D. 1914, upon voluntary petition filed in this court, and your petitioner, M. P. Freeman was, on the 31st day of October, 1914, appointed and duly qualified as trustee of the estate of said Southern Arizona Smelting Company in bankruptcy, and is now acting as the said trustee.

II.

That among the debts secured by said bankrupt in said bankruptcy proceedings, is one for Twenty-six Thousand Eight Hundred and Eighty-seven Dollars and Seventy-one Cents (\$26,887.71) due Imperial

*Page-number appearing at foot of page of original certified Record.

Copper Company, a Corporation, and that such debt is of such a nature as to be released by a discharge in bankruptcy.

III.

That on or about the 27th day of July, 1911, said Imperial Copper Company was duly adjudicated a bankrupt by the District Court of the First Judicial District of the Territory of Arizona, and the estate of said Imperial Copper Company, bankrupt, is now being administered by this Honorable Court; that John H. Martin is the duly appointed, qualified and acting trustee of the estate of said Imperial Copper Company, bankrupt. [1b]

IV.

That at the time of the filing of the petition, in which said Southern Arizona Smelting Company was adjudicated a bankrupt, as aforesaid, a suit was pending in the Superior Court of the county of Pima, State of Arizona, entitled "M. P. Freeman as Trustee of the Imperial Copper Company, a Corporation, Bankrupt, versus Southern Arizona Smelting Company," founded upon the debt aforesaid, from which a discharge in bankruptcy would be a release, and that the suit is still pending therein; that if such suit is not stayed, great injury will be done your petitioner, and the estate of Southern Arizona Smelting Company to be administered in bankruptcy herein.

V.

During, or about the month of June, 1914, your petitioner then being the duly appointed, qualified and acting trustee in bankruptcy of said Imperial Copper Company resigned his position as such trus-

tee, and John H. Martin was thereupon duly appointed as such trustee, and qualified as such, and at all times since, has been, and is now, acting as such trustee.

VI.

That within the period of four months prior to the filing of the petition in bankruptcy herein, plaintiff in said action caused a writ of attachment to be issued therein which within said period of four months was levied upon real estate of said Southern Arizona Smelting Company, including its smelting plant, situated in Pinal County, Arizona, being substantially all of the estate of said bankrupt; that the property covered by the lien of said attachment is in the actual possession and control of your petitioner as trustee of the estate of said bankrupt.

VII.

Your petitioner is informed and believes, and upon such [2] information and belief alleges the fact to be that the petition in bankruptcy herein was filed by the bankrupt because of the existence of said attachment lien, and was filed within the period of four months after the levy of said attachment in order to prevent the plaintiff in said action from securing a preference by and through said attachment; that at the time of the levy of said writ of attachment, said Southern Arizona Smelting Company was, at all times since has been and now is insolvent, and the line of said attachment was wholly discharged and released by the adjudication of bankruptcy herein, and thereby rendered null and void.

WHEREFORE, your petitioner prays that a day

be set for the hearing of this petition; that an order of this Court be regularly issued and served upon John H. Martin, trustee, requiring him to appear upon said day and show cause why an injunction should not be issued as herein prayed, and that upon such hearing, further proceedings in said suit may be stayed pursuant to the bankruptcy laws of the United States in such action made and provided, and that an injunction may be issued out of this Honorable Court directed to the said John H. Martin, trustee of the Imperial Copper Company, bankrupt, restraining him, his agents, servants, attorneys and counsellors from further prosecuting said suit in said court, and for such other and further relief as to the Court may seem proper.

(Signed) M. P. FREEMAN,

(Signed) ELLINWOOD & ROSS,

Attorneys for M. P. Freeman, Trustee of Southern
Arizona Smelting Company, Bankrupt. [3]

State of Arizona,

County of Cochise,—ss.

I, M. P. Freeman, petitioner mentioned in the foregoing petition, do hereby make solemn oath that the statements of fact contained therein are true to the best of my knowledge and belief.

(Signed) M. P. FREEMAN.

Subscribed and sworn to before me this 16th day of March, 1915.

[Seal]

(Signed) JOHN W. MAYS,

Notary Public.

My commission expires March 4, 1919.

[Endorsements]: B-9 (Tucson). In the District Court of the United States for the District of Arizona. In the Matter of the Southern Arizona Smelting Company, a Corporation, Bankrupt, Petition for Injunction to Stay Suit in State Court. Filed March 18th, A. D. 1915, at 12 M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.
[4]

**[Order Directing John H. Martin, as Trustee, of
Imperial Copper Co. to Show Cause.]**

*In the District Court of the United States for the
District of Arizona.*

In BANKRUPTCY—No. B-9 (Tucson).

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation,
Bankrupt.

Application having been made by M. P. Freeman, trustee of Southern Arizona Smelting Company, bankrupt, for an order staying further proceedings in a certain suit in the Superior Court of the State of Arizona, in and for Pima County, entitled M. P. Freeman, as trustee of the Imperial Copper Company, a corporation, bankrupt, vs. Southern Arizona Smelting Company, a corporation, and now entitled John H. Martin, as trustee of the Imperial Copper Company, a corporation, bankrupt, against Southern Arizona Smelting Company:

Now, on motion of Messrs. Ellinwood & Ross, attorneys for the said applicant, it is ordered: That the said John H. Martin, as trustee of the Imperial

Copper Company, a corporation, bankrupt, the plaintiff in said action, show cause before me, District Judge, at the United States District courtroom in the city of Tucson, Pima County, Arizona, in said District, on the 3d day of April, 1915, at ten o'clock A. M., or as soon thereafter as counsel can be heard, why a writ of injunction should not issue out of *an* under the seal of said court, as prayed for in said petition.

Let service of this order on said John H. Martin, as trustee in bankruptcy of the Imperial Copper Company, a corporation, bankrupt, the plaintiff, by delivering to him personally, or to his attorney of record, a copy of the same and of the petition on which it is granted, within ten days previous to the day last hereinabove mentioned, be sufficient.

Dated this 18 day of March, 1915.

(Signed) WM. H. SAWTELLE,
Judge.

[Endorsements]: No. B-9 (Tucson). In the United States District Court for the District of Arizona. In the Matter of Southern Arizona Smelting Co., a Corporation, Bankrupt. Order to Show Cause on Motion to Stay Suit, Filed March 18, A. D. 1915, at 2:30 P. M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

Service admitted with copy of petition this 18th day of March, 1915.

FRANCIS M. HARTMAN,
E. F. JONES,

Attorneys for Plaintiff. [5]

*In the United States District Court for the District
of Arizona.*

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

**Answer of John H. Martin, Trustee of the Imperial
Copper Company, a Corporation, Bankrupt, to
Order to Show Cause, Heretofore Issued Herein
and to Petition Heretofore Filed Herein by M.
P. Freeman, Trustee of the Southern Arizona
Smelting Company, a Corporation, Bankrupt**

Now comes John H. Martin, trustee in bankruptcy
of the Imperial Copper Company, a corporation,
bankrupt, and makes answer to the order to show
cause heretofore issued herein on March 18, 1915, and
to the petition heretofore filed herein by M. P. Free-
man, trustee of the Southern Arizona Smelting Com-
pany, a corporation, bankrupt, as follows:

I.

That heretofore, on July 5th, 1911, a petition in
bankruptcy was filed against the Imperial Copper
Company, a corporation duly organized, created by
and existing under and by virtue of the laws of Ari-
zona, and doing business at the county of Pima, in
said State (then Territory). That thereafter on
July 25, 1911, said Imperial Copper Company was
duly adjudged a bankrupt. That thereafter on
August 12, 1911, M. P. Freeman was elected trustee
of said estate and qualified as such and acted as such
trustee until on or about July 2, 1914, at which time

respondent herein was duly elected and qualified as such trustee to fill the vacancy caused by the resignation of said M. P. Freeman, and your respondent is now, and ever since has been the duly elected, qualified and '[6]' acting trustee in bankruptcy of said Imperial Copper Company.

II.

That the said Southern Arizona Smelting Company was organized under the laws of Arizona some time in the year 1906, with its principal place of business at the county of Pima, state of Arizona, and that said corporation became the owner of and now owns and holds in its corporate name a large, up-to-date smelting plant, situate at the town of Sasco, Pinal County, Arizona, which said smelting plant cost to exceed the sum of six hundred thousand dollars, together with a large tract of land on which said plant is situated. A schedule of which said properties so belonging to said smelting plant is attached hereto and made a part hereof, marked exhibit "A."

III.

That at the time of the bankruptcy of said Imperial Copper Company, your respondent is informed and believes and upon such information and belief alleges that the said smelting company was indebted to the said Imperial Copper Company in the sum of twenty-six thousand, eight hundred eighty-seven and $71/100$ dollars, for balance due on account of goods, wares and merchandise sold and delivered by said Imperial Copper Company to said smelting company, and for services performed by the said Imperial Copper Company for said smelting company

and for moneys paid by said copper company for the use and benefit of the said smelting company, furnished, done and performed at the request of said smelting company, between the first day of January, 1910, and the fifth day of July, 1911. [7]

IV.

That on January 23, 1912, the said M. P. Freeman, as trustee in bankruptcy of the said Imperial Copper Company, bankrupt, instituted an action in the then District Court of the Territory of Arizona, in and for the county of Pima, against said Southern Arizona Smelting Company, to recover from the said smelting company the said sum of \$26,887.71, upon said indebtedness, and that said action is still pending undetermined in the Superior Court of the State of Arizona, in and for the county of Pima, the successor of said court; and that nothing was done in said action up until on or about June 17, 1914, as hereinafter set forth, excepting that summons and complaint was served upon Geo. W. Dietz, secretary of said Smelting Company, on January 25th, 1912.

V.

That during all of said time as above set forth the said M. P. Freeman was also receiver of the property of said Imperial Copper Company under a certain foreclosure suit brought against it by the Bankers' Trust Company of New York, in the said District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima.

VI.

That on or about June 6, 1914, certain creditors whose claims had been filed and allowed in the mat-

ter of the bankruptcy of the Imperial Copper Company made an application in writing upon the said M. P. Freeman, trustee in bankruptcy of said Imperial Copper Company, to cause to be issued an attachment in said suit and cause the same to be levied upon the property of said smelting company and tendered to and agreed to furnish to said Freeman, trustee, a good and sufficient attachment bond in the sum of thirty-two thousand [8] dollars, as required by law, but that the said Freeman declined to comply with said application.

That on or about the said 6th day of June, 1914, the said creditors of said copper company filed in the said bankruptcy proceedings of said Imperial Copper Company, with F. H. Bernard, Esq., the referee before whom said proceedings were pending, a petition praying for an order that the said M. P. Freeman, as trustee of said Imperial Copper Company cause to be issued an attachment in said action and cause the same to be levied upon the property of said smelting company and caused notice of said petition to be served upon said Freeman as such trustee.

That the said Freeman, as trustee of said Imperial Copper Company, appeared before said referee, by his attorney, Selim M. Franklin, Esq., and filed an answer to the petition of said creditors and resisted such application, and the said referee denied such application on or about June 8, 1914.

That thereupon said creditors filed a petition for review of the said order so made and entered by the said F. H. Bernard, referee, which said petition for review was thereafter heard by this Honorable Court

and on or about the 16th day of June, 1914, this Court made and entered an order ordering said M. P. Freeman, as trustee in bankruptcy of said Imperial Copper Company to cause to be issued an attachment in the said suit of M. P. Freeman, trustee, against said smelting company, and cause the same to be levied upon the property of said smelting company, upon the said creditors furnishing to said M. P. Freeman, as such trustee, an attachment bond in the sum of thirty-two thousand dollars.

That thereafter the said creditors procured and furnished to the said M. P. Freeman, as trustee of said Imperial Copper [9] Company an attachment bond in the sum of thirty-two thousand dollars, and on June 17, 1914, the said M. P. Freeman, as trustee of said Imperial Copper Company, bankrupt, in obedience to said order, of this court, caused to be issued in said action a writ of attachment and caused the same on the 19th day of June, 1914, to be levied upon all of the property of said smelting company, described as follows, to wit:

“All of the Southwest Quarter (SW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 160 acres, more or less.

All of the East Half (E. $\frac{1}{2}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 320 acres, more or less.

All of the East Half (E. $\frac{1}{2}$) of the Northwest Quarter (NE. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B.

& M., Pinal County, Arizona, containing eighty (80) acres, more or less.

All of the West Half (W. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less.

All of the North Half (N. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less.

together with all the fixtures, improvements and appurtenances thereon or annexed thereto," and being more particularly described in the schedule hereunto annexed and marked Exhibit "A." [10]

That true copies of the complaint in said action of M. P. Freeman, as trustee of the Imperial Copper Company, a corporation, bankrupt, against the Southern Arizona Smelting Company, a corporation, defendant, also the affidavit of attachment, writ of attachment, levy and return of the officer, are attached hereto and made a part hereof, marked exhibits "B," "C," and "D."

VI.

That on or about September 29, 1914, the said Southern Arizona Smelting Company filed herein its voluntary petition in bankruptcy and on the same day was adjudicated a bankrupt upon said voluntary petition, and thereafter on or about the 30th day of October, 1914, said M. P. Freeman was elected trustee in bankruptcy of said smelting company and duly

qualified as such and is now and has been ever since said date the duly elected, qualified and acting trustee in bankruptcy of said corporation.

That said smelting company on said September 29, 1914, filed herein, along with its said voluntary petition, certain schedules of debts and assets, and listed as such debts, the following:

Taxes for 1913	\$1,784.89
Louis St. Louis, Keeper, 4 months at \$100 per mo.	400.00
Geo. W. Dietz, Manager & Bookkeeper, 4 months at \$100.00 per month.....	400.00
Colorado Fuel & Iron Co., Denver, Colo., 2 promissory notes	27,759.71
Consolidated National Bank of Tucson, promissory note	10,000.00
Aubry & Semple, El Paso, Texas, promis- sory note	1,878.39
El Paso Foundry & Machine Co., El Paso, Texas, promissory note	901.25
Poland Mining Company, Prescott, Ari- zona, promissory note	311.05
B. P. Cheney and F. M. Murphy, promis- sory note	1,500.00
F. M. Murphy, promissory note	4,755.79
B. P. Cheney, Boston, Mass., promissory note	2,974.11
Imperial Copper Company, balance due...	26,887.71
Arizona Southern Railroad Company....	10.00

VII.

That the following debts were listed in said schedules under the head of accommodation paper:

“Joint notes of Arizona Southern Railroad Company and petitioner (Southern Arizona Smelting Company), executed by petitioner (Southern Arizona Smelting Company), as joint maker for accommodation of the Arizona Southern Railroad Company.

Date.	Holder.	Residence.	Amount.
1-2-12.	B. P. Cheney & F. M. Murphy,		
	Boston & Prescott		\$13,396.11
9-1-13.	do do do do do do....		28,566.07
5-1-14.	B. P. Cheney, Boston		6,000.00
4-9-14.	Consolidated National Bank of		
	Tucson		10,000.00
7-1-12.	Colorado & Wyoming RR. Co.,		
	Denver, Col.		721.36
	do do do do ...		84.11
6-1-13.	El Paso & S. W. System, El Paso,		
	Tex.		4,820.47
6-1-13.	Stag Canyon Fuel Co.....		1,263.07
Total Accommodation Paper,			\$64,841.82

VIII.

That your respondent is informed and believes and upon such information and belief alleges that each, all and every of the above-mentioned claims and debts so listed by the said smelting company under the head of accommodation paper are invalid and illegal and not proper and just debts of said smelting company and cannot be proved or allowed in this bankruptcy proceeding as debts against said smelt-

ing company, and should not be permitted to be proved or allowed as just and valid debts against said smelting company for the reason that each, all and every of the said obligations were attempted to be executed by the said Southern Arizona Smelting Company as joint maker for the accommodation of a certain other corporation, to wit, the Arizona Southern Railroad Company; that said smelting company received no consideration or benefit whatsoever from either or any of said obligations; that the attempted execution of each, all and every of said notes [12] by the said smelting company was and is *ultra vires*; that each all and every of said notes were given for debts owing by the said Southern Arizona Railroad Company; and that the said smelting company was not in any way responsible or liable for such debts of the said railroad company; that the said smelting company had no power or authority to make, execute or deliver either or any of said notes; and that neither of the holders of said notes is a *bona fide* holder thereof for value without notice of all the matters and things hereinbefore set forth, with the possible exception of the said Consolidated National Bank of Tucson, so scheduled as the holder of that certain accommodation note, dated April 4, 1914, for the sum of ten thousand dollars, and that if the said Consolidated National Bank of Tucson is a *bona fide* holder without notice of said note, that then and in that event the said smelting company is entitled to recover of and from the said Arizona Southern Railroad Company said sum of ten thousand dollars and interest; and in case said

claim on said accomodation note should be allowed as a claim against said smelting company herein, that then and in that event the said smelting company has a just and valid claim against said railroad company and such claim should be taken into account as an asset of the said smelting company; and your respondent is informed and believes and therefore alleges that the said debt could be collected from the said railroad company.

IX.

That certain of the claims so founded upon such accommodation paper have been filed by the holders thereof before the Referee who has charge of these proceedings, as follows:

B. P. Cheney and F. M. Murphy.	\$13,396.11
B. P. Cheney and F. M. Murphy.	.28,566.70
B. P Cheney	6,000.00
Consolidated National Bank....	10,000.00

[13]

and your respondent is informed and believes and upon such information and belief alleges that the said M. P. Freeman, as trustee of said smelting company has taken no steps to object to the allowance of either or any of such claims so filed.

X.

This respondent denies that at the time of the issuance and levy of said attachment or at any time the said smelting company was insolvent.

And respondent alleges that at the time of the levy of said attachment, to wit, on the 19th day of June, 1914, and at the time of the filing of the petition in bankruptcy herein, to wit, the 29th day of

September, 1914, and at all the times mentioned herein the said smelting company was and is solvent and that the aggregate of the property of said smelting company, exclusive of any property which it may have transferred, concealed or removed, or attempted to conceal or remove, with intent to defraud, hinder or delay its creditors, was and is, at a fair valuation thereof, sufficient in amount to pay its debts.

XI.

Respondent denies that the lien of said attachment was wholly discharged and released by the said adjudication of bankruptcy herein and denies that the attachment lien was rendered null and void by the said adjudication in bankruptcy.

Respondent alleges that the lien of said attachment is a valid and subsisting lien against all of the property of said smelting company so levied upon as appears from said writ and as of the date of said levy, and that respondent, as trustee in bankruptcy of said Imperial Copper Company, a corporation, bankrupt, is entitled to have said lien adjudged to be a valid and subsisting lien to secure the payment of [14] debt and to have the same foreclosed in accordance with the law in such cases made and provided.

XII.

That heretofore, on or about the — day of ———, 1915, your respondent, John H. Martin, as trustee in bankruptcy of the said Imperial Copper Company, a corporation, bankrupt, was substituted as plaintiff in said action so pending in said Superior

Court, in place of the said M. P. Freeman, as such trustee.

WHEREFORE, respondent prays:

1. That this Court proceed to hear said matter and take evidence with reference to the question of the insolvency of said smelting company, or that said matter be referred to the referee herein to hear and take evidence upon such question, and that the said smelting company be adjudged to be solvent at the time of said attachment and at the time of the filing of said petition in bankruptcy, and at all times mentioned herein.

2. That the lien of this respondent, as trustee in bankruptcy of the said Imperial Copper Company, a corporation, bankrupt, under said attachment be adjudged to be a valid and subsisting lien on all of the property of said smelting company so levied upon, as of the date of said levy, to secure the payment of said debt in the sum of \$26,887.71 with interest thereon at the rate of six per cent per annum from the 5th day of July, 1911, until paid, and for all costs incurred in said action, and that said lien be foreclosed.

3. That said order to show cause be dismissed.

4. And for any other further, special or general relief as to the Court may seem meet and proper and for costs.

(Signed) FRANCIS M. HARTMAN,
EDWIN F. JONES,

Attorneys for John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt. [15]

State of Arizona,
County of Pima,—ss.

John H. Martin, being first duly sworn, deposes and says that he is the trustee in bankruptcy of the Imperial Copper Company, a corporation, bankrupt and the respondent above named: That he has read the foregoing answer and petition and knows the contents thereof and that same is true in substance and in fact, of his own knowledge, except as to matters and things therein stated on information and belief, and as to such matters and things he believes it to be true.

(Signed) JOHN H. MARTIN.

Subscribed and sworn to before me this 31 day of March, A. D. 1915.

My commission expires Feb. 19, 1916.

[Seal] (Signed) R. W. LANGWORTHY,
Notary Public, Pima Co., Arizona. [16]

Exhibit "A" [to Answer of John H. Martin, Trustee—Inventory.]

**INVENTORY OF SOUTHERN ARIZONA
SMELTING CO.'S PROPERTY.**

(POWER-HOUSE.)

- 1 Pawling & Hernaishifeger Crane, capacity 20,000 lbs.
- 3 Large Nordberg Engines, compressors & blowers, complete.
- 1 Westinghouse Standard Engine and alternating current generator 440 volts.

- 1 Ingersoll-Rand Compressor, size 16x12-14x12-10x12-9x12.
- 1 Westinghouse Induction Motor, 75 hp. & 400 volts.
- 1 Westinghouse Direct current generator, 250 volts.
- 1 Westinghouse Induction motor, constant speed 75 hp. 400 volts.
- 1 Westinghouse Direct current generator, 125 volts.
- 1 Westinghouse Standard Engine, size 6x7.
- 1 Westinghouse current generator 125 volts.
- 1 Westinghouse Parsons Steam turbine, 3600 R. P. M.
- 1 Westinghouse alternating current generator, 3600 R. P. M. 440 vlt.
- 1 Alberger dry vacuum pump, size 6x14x14x10.
- 1 Alberger surface condenser, size 2,000.
- 1 Alberger condenser engine, size 7 & centrifugal pump.
- 1 Alberger dry vacuum pump, size 6x14x10.
- 1 Alberger condenser engine, size 6 & centrifugal pump.
- 1 Alberger surface condenser, size 1400.
- 1 Atlas Gasoline Engine, size 8x10 and centrifugal pump.
- 1 Oil pump and 2 self oil feeders.
large amount of electrical equipment.

(BOILER-HOUSE.)

- 4 large marine boilers complete.
- 2 Fairbanks-Morse pumps, complete.

- 1 Hoppes Mnfg. Co. Exhaust heater.
- 2 oil pumps.

(SMELTER.)

- 2 large furnaces complete for smelting copper ore, stacks, etc.
- 5 iron flat cars, each carrying 6 moulds for matte.
- 36 extra matte moulds.
- 6 converters and 2 converter stacks.
- 8 large converter matte pots.
- 1 Emence Electric Crane.
- 1 Small electric crane, 1 Small electric engine.
- 2 Baldwin Locomotive works electric engines, R.
R. main floor.
- 24 large smelter side frames.
- 1 Chilean Mill and two extra rolls (stone).
- 1 Automatic electric starter, 400 volts.
- 2 stone crushers.
- 1 wood water-tank.
- 2 Westinghouse motors, about 30 hp. each.
- 2 5" centrifugal pumps.
- 2 Baldwin Locomotive works elec. R. R. Engines,
2d floor.
- 12 Arthur Kopple Co. Iron ore cars, self-dumping.
- 1 R.R. platform scale, main floor.

(SAMPLING WORKS.)

- 1 Power & Uling Mnfg. Co. rock-crusher 20x106
ext jaws.
- 2 Power & Uling Mnfg. Co. rock-crusher smaller.
- 2 large ore samplers.
- 1 small ore sampler.
- 2 elevator belt conveyors for ore, beling complete,
50 ft.

- 1 Westinghouse induction motor, 40 hp.
- 1 Westinghouse automatic starter, 400 volts.
- 1 Westinghouse induction motore, abt 20 hp.
- 1 Fairbanks No. 04 platform scale.
- 1 wheelbarrow.
- 1 lot assay equipment, old.
- 1 ore bin.
- several carloads of coke. [17]
- 1 wheelbarrow.
- 36 large ore bins complete, arranged to dump ore from R.R.
- 30 auto cars with scales to weight ore from cars to smelter.
- 1 steam donkey-engine to hoist tram cars.
- 1 platform scale, for weighing flue dust.
- 1 roll copper wire cabel, 1/2".
- (SMELTER STOREHOUSE.)
- 2 5" centrifugal pumps.
- 2 Westinghouse induction motors, 40 hp.
- 1 Westinghouse induction motor, 20 hp.
- 2 Westinghouse induction motors, 30 hp.
- 1 Westinghouse induction motor, 10 hp.
- 2 Westinghouse automatic starters, about 400 volts.
- 1 Westinghouse electric light starter.
- 3 chain block and tackle with hemp rope.
- 6 wheelbarrows, iron.
- 2 valves, size 8x6 & large quantity of small valves.
- 1 lot old tools, shovels, coke forks, rivets, bolts, pipe, etc.
- 15 cases machine oil.
- 4 large cast iron pots for smelter, on platform.

- 10 rock-crusher jaws.
- 1 large rotary pressure blower, outside of building.
- 1 lot, large assortment of castings, rivets, bolts, pipes, etc.

(MISCELLANEOUS NEAR SMELTER.)

- 4 R.R. hand cars, standard gauge.
- 3 slag cars, standard gauge.
- 1 R.R. engine, standard gauge.
- 3 Pcs. flue dust pipe, about 5' in diameter, 5 pcs. spiral pipe, about 16" in diam.
- 1 oil tank, capacity 140,000 gal.
- 1 pump for pumping oil into tank from reservoir at R.R.
- 1 large cement mixer with steam boiler & engine on wheels.
- 1 clay machine, complete, with moulds.
- 2 large water-coolers.
- 1 water-tank, capacity 115,000 gal.
- 1 water-tank, capacity 20,000 gal.
- 2 water-tanks, capacity 2,500 gal.
- 1 steel smokestack, 14'x185' in height.
- 1 brick building for flue dust, complete.
- 1 lot timbers, small amount, scattered around.
- 10 large steel ore cars, standard Gauge RR.

(REPAIR-SHOP BUILDING.)

- 1 gasoline engine, 12 hp. complete.
- 3 Westinghouse induction motors, abt. 40 hp.
- 1 large lathe.
- 2 large plainers for steel work.
- 1 hydraulic drill.

- 2 hydraulic drills small.
- 2 Emery stones and complete equipment.
- 1 thread machine for bolts.
- 1 thread machine for pipe.
- 1 large planer for steel.
- 1 large grindstone.
- 2 vices and 3 work benches.
- 1 lot, large asstmt., flue-pipe, water-pipe, bolts, castings.
- 1 large shear for cutting iron.
- 1 large bender for bending iron.
- 2 vises and 1 workbench.
- 1 large vise, upset.
- 1 wrench.
- 1 blacksmith drill.
- 3 anvils.
- 3 blacksmith forges.
- 1 lot blacksmith tools and bar iron. [18]

(COMPANY STORE.)

- 9 glass show-cases.
- 2 large wooden counters.
- 3 counter scales.
- 1 1000 lb. platform scale.
- 2 butchers scales.
- 1 chopping block.
- 1 large ice-box.
- 1 small ice-box.
- 1 1 bar ice-box combination.
- 1 meat-saw.
- 1 butcher's axe.
- 1 trunk truck.

- 1 sausage-grinder.
- 1 tobacco-cutter.
- 2 safes.
- 1 roll-top desk.
- 1 typewriter desk.
- 1 filing case.
- 2 chairs.
- 2 stools.
- 1 letter-press.
- 1 table.
- 1 step-ladder.
- 2 rope-reels.
- 1 plow.
- 1 harrow.
- 1 scraper.

(DRAFTSMAN'S OFFICE.)

- 1 roll top desk, 1 heating stove, 3 tables, 4 chairs.
- 4 draughtsman tables, 1 surveyor's steel tape.
- 1 letter-press, 1 wall clock, 1 lot wooden stools.
- 3 lockers, 1 hand-saw, 1 lot blank smelter returns,
etc.

(BOARDING-HOUSE.)

- 2 ranges, 7 tables.

(ASSAY OFFICE.)

- 2 balances, assorted chemicals.

(COMPANY BUILDINGS.)

- 1 sampling works bldg, lg. 50 ft. high, wood frame,
iron sides and roof
- 1 smelter building, steel frame and cor. iron
sides & roof, 60x100.
- 1 flue dust building.

- 1 storage building, lime, etc.
- 1 power hs. bldg., steel frame, cor iron sides and roof, 60x100.
- 1 power hs. bldg., steel frame, cor iron sides and roof, 50x80.
- 1 open platform for coal.
- 1 smelter repair bldg., wood frame, cor. iron sides and roof, 40x12.
- 1 smelter supply bldg., wood frame cor. iron sides and roof, 40x80.
- 1 wood work-shop & assay off. bldg., wood frame and cor. iron sides and roof, 40x80.
- 1 pay off and draughtman's office, wood, 3 rooms.
- 1 9-room brick dwelling, plastered outside.
- 1 barn and corral.
- 1 16-room adobe lodging-house.
- 1 boarding-house, dining-room and kitchen, wood and canvass.
- 1 gen. mdse. bldg., frame 40x80.
- 1 frame dwelling.
- 6 tent frames. [19]

*In the District Court of the First Judicial District
of the Territory of Arizona, in and for the
County of Pima.*

**Exhibit "B" [to Answer of John H. Martin, Trustee
—Complaint].**

M. P. FREEMAN, as Trustee of the IMPERIAL
COPPER COMPANY, a Corporation, Bank-
rupt,

Plaintiff,

vs.

SOUTHERN ARIZONA, SMELTING COMPANY,
a Corporation,

Defendant.

Plaintiff complains of defendant and alleges:

I.

That at all the times hereinafter mentioned, the Imperial Copper Company was, and still is, a corporation, organized under the laws of the Territory of Arizona, and that Southern Arizona Smelting Company, the defendant herein, during all of said times hereinafter mentioned, was and still is, a corporation, duly organized and existing under and by virtue of the laws of the Territory of Arizona.

II.

That on the 27th day of July, 1911, the said The Imperial Copper Company, a corporation as afore-said, was adjudicated a bankrupt by the District Court of the First Judicial District of the Territory of Arizona, upon a petition filed in said court against said corporation on the 5th day of July, 1911, and that thereafter, and on the 12th day of August,

1911, plaintiff herein was duly appointed the trustee of said bankrupt in the matter of the bankruptcy of said corporation aforesaid, and did file his bond as such trustee, which bond was duly approved by said Court of Bankruptcy on the 26th day of August, 1911, and thereafter and on the 29th day of [20] August, 1911, a certified copy of the said order of adjudication and of the approval of said bond were duly filed and recorded in the office of the county recorder of said Pima County; that the said appointment of this plaintiff as such trustee has not been revoked and this plaintiff is still the trustee of the said the Imperial Copper Company, a bankrupt, as aforesaid. That thereafter and on the 18th day of January, 1912, the referee in bankruptcy did authorize and direct this plaintiff, as trustee, as aforesaid to bring this suit.

III.

That on the 5th day of July, 1911, being the day when the petition in bankruptcy against said The Imperial Copper Company was filed with the said Court aforesaid, the said defendant was indebted to the said The Imperial Copper Company in the sum of \$26, 887.71, for balance of an account for goods, wares and merchandise sold and delivered by the said Imperial Copper Company to said defendant, and for services performed by the said The Imperial Copper Company for the said defendant, and for moneys paid by the said The Imperial Copper Company for defendant's use; the whole furnished, done and performed at the request of the

defendant, between the first day of January, 1910, and the 5th day of July, 1911.

That defendant had not paid the said sum, or any part thereof, either to the said The Imperial Copper Company, or to this plaintiff, and that there is now due, owing and unpaid from said defendant, to this plaintiff, as trustee, as aforesaid, the sum of \$26,887.71, with interest thereon at the rate of 6% per annum from the 5th day of July, 1911.

WHEREFORE, plaintiff, as trustee as aforesaid, prays judgment against said defendant with interest thereon at the rate of 6% per annum from the 5th day of July, 1911, until paid, and for costs.

FRANCIS M. HARTMAN,
SELIM M. FRANKLIN,
Attorneys for Plaintiff.

(Filed 23d 1912.) [21]

**.Exhibit "C" [to Answer of John H. Martin,.
Trustee— Affidavit of Attachment.]**

*In the Superior Court of Pima County, State of
Arizona.*

M P. FREEMAN, as Trustee of the IMPERIAL
COPPER COMPANY, a Corporation, Bank-
rupt,

Plaintiff,

vs.

SOUTHERN ARIZONA SMELTING COMPANY,
a Corporation,

Defendant.

The State of Arizona,
County of Pima,—ss.

M. P. Freeman, as trustee of Imperial Copper Co., Bankrupt, being duly sworn, says: That he is the plaintiff in the above-entitled action, and that the defendant is indebted to plaintiff upon an implied contract *contract* for the direct payment of money, and such contract was made and is payable in the State of Arizona, and the payment of same is not secured by any mortgage or lien upon any real or personal property, or any pledge of personal property, and the character of said indebtedness is as follows, to wit: for goods, wares and merchandise sold and delivered by said Imperial Copper Company to the defendant; services performed by said Imperial Copper Company for defendant; and for moneys paid by the said Imperial Copper Company for defendant's use; the whole furnished, done and performed at the request of defendant between the first day of January, 1910, and the 5th day of July, 1911, and of the reasonable value of \$26,887.71.

That the same is due plaintiff over and above all legal set-offs or counterclaims, and that demand has been made for payment of the amount due.

That the Attachment is not sought for wrongful or malicious purposes, and the action is not prosecuted to hinder or delay any creditor of the defendant.

M. P. FREEMAN,
Trustee.

Subscribed and sworn to before me this 17th day of June, 191—

LILLIE THOMAS,

Notary Public,

Clerk of the Superior Court in and for Pima County.

(Filed June 17th, 1914.) [22]

[**Exhibit "D" to Answer of John H. Martin, Trustee
—Writ of Attachment.**]

*In the Superior Court of Pima County, State of
Arizona.*

M. P. FREEMAN, as Trustee of the IMPERIAL
COPPER COMPANY, a Corporation, Bank-
rupt,

Plaintiff,

vs.

SOUTHERN ARIZONA SMELTING COMPANY,
a Corporation,

Defendant.

The State of Arizona to the Sheriff or any Constable of the County of Pinal, GREETING:

We command that you attach forthwith so much of the property of Southern Arizona Smelting Company, or corporation, if to be found in your County, on security, as shall be of value sufficient to make the sum of \$26,887.71 dollars, with interest at six per cent per annum from July 5th, 1911, and the probable costs of suit, to satisfy the demand of M. P. Freeman, as Trustee of the Imperial Copper Company, a corporation, bankrupt, and that you keep secure in your hands the property so attached, unless replevied, that the same may be liable to

further proceedings thereon, to be had before the Court, and that you make return of this writ showing how you have executed the same.

Witness, Hon. WILLIAM F. COOPER, Judge of said court, at the Court House, in the said County of Pima, this 17th day of June, 1914.

Attach my hand and seal of the said Court, the day and year last above written.

[Seal]

S. A. ELROD,
Clerk.

By _____
Deputy. [23].

*In the Superior Court of the State of Arizona, in and
for the County of Pima.*

M. P. FREEMAN, as Trustee in Bankruptcy of the
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

SOUTHERN ARIZONA SMELTING COMPANY,
a Corporation,

Defendant.

**Levy of Attachment—Forming Part of Exhibit “D”
to Answer of John H. Martin, Trustee.**

State of Arizona,
County of Pinal,—ss.

I, the undersigned, Sheriff of Pinal County, State of Arizona, do hereby certify that I received the within writ of attachment at the hour of one o'clock, P. M. on the 19th day of June, 1914, and I do hereby

levy the same upon the following described property of the within-named defendant, Southern Arizona Smelting Company, a corporation, situated in the county of Pinal, state of Arizona, to wit:

All that certain real estate situate at Sasco, in said county and state, belonging to the said Southern Arizona Smelting Company, upon which is situate the smelting plant belonging to said company, and more particularly described as follows:

All of the Southwest Quarter (SW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 120 acres, more or less.

All of the East Half (E. $\frac{1}{2}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M. [24] Pinal County Arizona, containing 320 acres, more or less.

All of the East Half (E. $\frac{1}{2}$) of the northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less.

All of the West Half (W. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less.

All of the North Half (N. $\frac{1}{2}$) of the Northwest Quarter, (NW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less.

—together with all the fixtures, improvements and appurtenances thereon or annexed thereto.

WITNESS my hand this 19th day of June, A. D. 1914.

HENRY D. HALL,
Sheriff of Pinal County, Arizona,
By JOE T. KINNEY,
Chief Deputy. [25]

*In the Superior Court of the State of Arizona, in and
for the County of Pima.*

M. P. FREEMAN, as Trustee in Bankruptcy of the
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

SOUTHERN ARIZONA SMELTING COMPANY,
a Corporation,

Defendant.

State of Arizona,
County of Pima,—ss

I, Henry D. Hall, sheriff of Pinal County, State of Arizona, do hereby certify that the foregoing is a true and correct copy of a writ of attachment issued out of the above-entitled action and with the endorsement of levy thereon.

WITNESS my hand this 19th day of June, A. D. 1914.

HENRY D. HALL,
Sheriff of Pinal County, Arizona,
By JOE T. McKINNEY,
Chief Deputy. [26]

*In the Superior Court of the State of Arizona, in and
for the County of Pima.*

M. P. FREEMAN, as Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Cor-
poration, Bankrupt,

Plaintiff,

vs.

SOUTHERN ARIZONA SMELTING COMPANY,
a Corporation,

Defendant.

Return on Attachment.

State of Arizona,
County of Pinal,—ss.

I, Henry D. Hall, Sheriff of Pinal County, State of Arizona, do hereby certify that I received the within writ of attachment at the hour of One o'clock P. M. on the 19th day of June, 1914, and that I levied the same upon all of the following described real property, situate in the county of Pinal, State of Arizona, to wit:

All that certain real estate situate at Sasco, in said county and state, belonging to the said Southern Arizona Smelting Company, upon which is situate the smelting plant belonging to said company, and more particularly described as follows:

All of the Southwest Quarter (SW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 160 acres, more or less.

All of the East Half (E. $\frac{1}{2}$) of Section Twenty,

Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 320 acres, more or less.

All of the East Half (E. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less. [27]

All of the West Half (W. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Ten (10) South, Range Nine (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less.

All of the North Half (N. $\frac{1}{2}$) of the Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Ten (10) South, Range (9) East, G. & S. R. B. & M., Pinal County, Arizona, containing 80 acres, more or less—

by endorsing said levy an said writ on said day and by filing with the county recorder of said Pinal County State of Arizona, a true and correct copy of said writ of attachment with the endorsement of said leby thereon, on said day at the hour of 4:30 o'clock, P. M.

WITNESS my hand this 19th day of June, A. D. 1914.

HENRY D. HALL,
Sheriff of Pinal County, Arizona,
By JOE F. McKINNEY,
Chief Deputy.

[Endorsed]:

State of Arizona,
County of Pima,—ss

I, W. L. Brown, Recorder in and for the county of Pinal, state aforesaid, do hereby certify that the annexed instrument was filed and recorded at request of Joe T. McKinney, on the 19 day of June, A. D. 1914, at — minutes past 4 o'clock, in book No. 14 of Miscls, Page 598.

WITNESS my hand and official seal 19 day of June, 1914.

W. L. BROWN,
Recorder.

By M. Obenscoe,
Deputy. [28]

[Endorsements]: No. B-9 (Tucson). In the United States District Court for the District of Arizona. In the Matter of the Southern Arizona Smelting Co., Bankrupt. Answer of John H. Martin, Trustee, etc. to Order to Show Cause and to Petition heretofore filed herein by M. P. Freeman, Trustee, etc. Copy received March 31st, 1915. S. M. Franklin, Attorney for M. P. Freeman, Trustee of Southern Arizona Smelting Co. Filed April 1, A. D. 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [29]

*In the District Court of the United States for the
District of Arizona.*

IN BANKRUPTCY—No. —

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation,
Bankrupt.

**Order That Writ of Injunction Issue to Stay Suit,
etc.**

The application of M. P. Freeman, trustee of Southern Arizona Smelting Company, Bankrupt, for an order staying further proceedings in a certain suit in the Superior Court of the State of Arizona, in and for Pima County, entitled John H. Martin as trustee of the Imperial Copper Company, a corporation, bankrupt, against Southern Arizona Smelting Company, came on to be heard this 21st day of June, 1915, Messrs. Ellinwood & Ross and Selim M. Franklin, Esq., appearing as attorneys for said M. P. Freeman, and Messrs F. M. Hartman and E. F. Jones as attorney for said John H. Martin, and it appearing from the verified answer of said plaintiff, Martin, trustee, that as the trustee in bankruptcy of said Imperial Copper Company he has a probable debt against the Southern Arizona Smelting Company, bankrupt; that a suit is now pending against said bankrupt estate in the Superior Court of the State of Arizona, in and for Pima County, for the enforcement of said debt; that such debt is of such a nature as to be released by a discharge in bankruptcy; that on the 19th day of June, 1914, a writ of attachment in said case was levied upon certain real property of the said Southern Arizona Smelting Company, Bankrupt, situate in Pinal County, State of Arizona; that on September 20, 1914, the said Southern [30] Arizona Smelting Company filed its voluntary petition in bankruptcy herein and on the same day was adjudicated a bankrupt, the filing of said petition and the said adjudication being less than four months

from the date of the levy of the said attachment aforesaid:

NOW, THEREFORE, it is ordered and adjudged, that said attachment lien is null and void, and that the property affected thereby shall be deemed released therefrom, and that the same pass to the trustee of said Southern Arizona Smelting Company, bankrupt, free of said line.

It is further ordered that the said John H. Martin, trustee of the Imperial Copper Company, a corporation, bankrupt, and his agents, servants, attorneys and counsellors, be and they hereby are, enjoined and restrained from prosecuting the said suit aforesaid, against said Southern Arizona Smelting Company, and all proceedings in said suit are hereby stayed, pursuant to the bankruptcy laws of the United States in such cases made and provided.

Dated this 2d day of November, 1915.

WM. H. SAWTELLE.

Judge.

[Endorsements]: No. B-9 (Tucson). In the United States District Court for the District of Arizona. In the Matter of the Southern Arizona Smelting Co., Bankrupt. Order that Writ of Injunction Issue to Stay Suit, etc. Filed Nov. 2, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [31]

*In the United States District Court for the District
of Arizona.*

In the Matter of SOUTHERN ARIZONA SMELT-
ING COMPANY, a Corporation,
Bankrupt.

**Order Allowing Petition for Revision in Matter of
Law.**

WHEREAS, application has been made for revision in matter of law by the Circuit Court of Appeals of the Ninth Circuit of the United States of the order entered herein on the 2d day of November, 1915, and the Court being satisfied that the question there determined is one of which revision may be asked, as provided in Sec. 24-b of the bankruptcy laws of 1898, and that the application should be granted; on motion of Francis M. Hartman, Esq., and Edwin F. Jones, Esq., attorneys for petitioner, IT IS ORDERED:

That the order of this court, made and entered herein on the 2d day of November, be revised in matter of law by the Circuit Court of Appeals of the Ninth Circuit of the United States, as provided by Sec. 24-b of the bankruptcy laws of 1898, and the rules and practice of that court.

That the clerk, within ten days from this date, prepare at the expense of the petitioner, a certified copy of such order and of the record of this case pertinent to such order, and file the same with the clerk of such circuit court of appeals.

WITNESS, the Honorable WILLIAM H. SAW-
TELLE, Judge of the said court, and the seal thereof,

at the city of Tucson, in said district, on the 20th day of November, 1915.

GEORGE W. LEWIS,
Clerk.

By Geo. C. Pollock,
Deputy Clerk. [32]

[Endorsements]: No. B-9. In the United States District Court for the District of Arizona. In the Matter of the Southern Arizona Smelting Company, a Corporation, Bankrupt. Order Allowing Petition for Revision in Matter of Law. Filed Nov. 20, A. D., 1915, at 2 P. M. George W. Lewis, Clerk. By George C. Pollock, Deputy Clerk. [33]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the United States District Court for the District of Arizona.

B-9—TUCSON.

In the Matter of THE SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

United States of America,
District of Arizona,—ss.

I, George W. Lewis, clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing pages number 1 to 33 inclusive, constitute and are *a* true, complete and correct *copies* of the Petition for Injunction to Stay Suit in State Court; Order to Show Cause on Motion to Stay Suit; Answer of John H. Martin, Trus-

tee, etc., to Order to Show Cause and to Petition heretofore filed herein by M. P. Freeman, trustee, etc.; Order that Writ of Injunction issue to Stay Suit, etc.; and the Order Allowing Petition for Revision in Matter of Law, filed in the matter of Southern Arizona Smelting Company, a corporation, Bankrupt, No. B-9—Tucson, as the same remain on file and of record in said District Court.

I further certify that the cost of preparing and certifying to said record amounts to the sum of \$17.70 and that same has been paid in full by the appellant, John H. Martin, Trustee, in said case. [34]

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona, at Tucson, in said District this 24th day of November, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States of America, the one hundred and fortieth.

[Seal]

GEORGE W. LEWIS,
Clerk United States District Court, District of Arizona.

By Effie D. Botts,
Deputy Clerk. [35]

[Endorsed]: No. 2697. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. John H. Martin, as Trustee of the Estate of Imperial Copper Company, a Corporation, Bankrupt, Petitioner, vs. M. P. Freeman, as Trustee of the Estate of Southern Arizona Smelting Company, a Corporation, Bankrupt, Respondent. Transcript of Record in Support of Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Arizona.

Filed December 6, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, as Trustee of the Estate of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Petitioner,

vs.

M. P. FREEMAN, as Trustee of the Estate of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,

Respondent.

**SUPPLEMENTAL TRANSCRIPT OF RECORD
IN SUPPORT OF
PETITION FOR REVISION**

Under Section 24b of the Bankruptcy Act of Congress, Approved
July 1, 1898, to Revise, in Matter of Law, a Certain
Order of the United States District
Court for the District
of Arizona.

**[Petition that Southern Arizona Smelting Co. be
Adjudged Bankrupt.]**

*In the District Court of the United States for the
District of Arizona.*

In the Matter of SOUTHERN ARIZONA SMELT-
ING COMPANY, a Corporation,
Bankrupt.

To the Honorable, WILLIAM H. SAWTELLE,
Judge of the District Court of the United States,
for the District of Arizona:

The petition of the Southern Arizona Smelting Company, a corporation organized under the laws of the State of Arizona, having its principle place of business at Silverbell, Pima County, in the State of Arizona, and not a municipal, railroad, insurance or banking corporation, respectively represents:

That it has had its principle place of business and its domicile, for the greater portion of six months and for more than six months next immediately preceding the filing of this petition, at Silverbell, State of Arizona, within said Judicial District.

That this petition is filed pursuant to a resolution passed by the board of directors, at a duly called meeting, held on the 24th day of September, 1914, in the said county of Pima and State, aforesaid, which said resolution is as follows, to wit:

“Whereas, it appears that this Company is largely indebted, and is wholly unable to pay any of its indebtedness, all of which is long overdue; and it is involved in litigation and is with-

out funds with which to pay the necessary expense thereof and has exhausted its ability to borrow money to procure funds for the care and preservation of its property, and [1*] whereas, unless steps be taken to declare this Company, a bankrupt, a pending attachment levied upon the Company's property, may result in one creditor receiving an unjust preference over the other creditors of the Company in like situation, now therefore

Resolved: This Company shall and does hereby declare that it is unable to pay its debts and is willing to be adjudged a bankrupt, under the laws of the United States. Resolved further that it would be for the best interests of this Company and its creditors that it be adjudged a voluntary bankrupt, to which end, G. W. Dietz, the Secretary and Treasurer of the Company, shall be, and he is hereby, duly authorized and empowered and directed, for and on behalf of this Company, to sign, verify, and file in the District Court of the United States, for the District of Arizona, a voluntary petition in bankruptcy, praying that this Company be adjudged a Bankrupt, according to the laws of the United States, and to execute, verify and file with said Court, such further documents, schedules or papers as may be required to enable this Company to fully avail itself of the benefit of said laws.

And he is further authorized and empowered, on behalf of this Company, and in its name, to

*Page-number appearing at foot of page of original certified Supplemental Record.

do all other matters and things necessary, advisable or proper to be done for the purpose of carrying out the intent of this resolution.”

that the corporation owes debts which it is unable to pay in full; that it is willing to surrender all of its property for the benefit of its creditors and desires to obtain the benefit of the Acts of Congress relating to bankruptcy; that the schedule hereto annexed marked “A,” verified by the secretary and treasurer of your petitioner under oath, contains a full and true statement of all of its debts, and, so far as it is possible to ascertain, the names and place of residence of its creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed marked “B” and verified by the secretary and treasurer of your petitioner under oath, contains an accurate inventory of all its property, both real and personal, and such further statements concerning said property as is required by the provisions of said acts.

WHEREFORE, your petitioner prays that it may be [2] adjudged by the Court to be a bankrupt within the purview of said acts.

SOUTHERN ARIZONA SMELTING CO.

By GEO. W. DIETZ,

Secy. and Treas.

United States of America,
District of Arizona,
County of Pima,—ss.

I, George W. Dietz, secretary and treasurer of the Southern Arizona Smelting Company, a corporation, the petitioned debtor mentioned and described in the

foregoing petition, do make solemn oath that the statements contained therein are true, according to the best of my knowledge, information and belief; and in pursuance of a resolution passed by the board of directors of said Southern Arizona Smelting Company, at a regular called meeting, held on the 24th day of September, 1914, I have signed the corporate name, and affixed the corporate seal to said petition.

GEORGE W. DIETZ,

Subscribed and sworn to before me this 28th day of September, 1914.

My commission expires January 19, 1918.

[Notarial Seal]

S. D. GROMER,

Notary Public.

[Endorsements]: No. B-9 Docket Tucson. U. S. District Court of Arizona. In the Matter of Southern Arizona Smelting Co., Bankrupt. Debtor's Petition in Bankruptcy. Filed ten o'clock A. M. this 29th day of September, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [3]

[Order Declaring and Adjudging Southern Arizona Smelting Company Bankrupt, etc.]

In the District Court of the United States, District of Arizona.

IN BANKRUPTCY.

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY,

Bankrupt.

At Tucson, in said district, on the 29th day of September, 1914, before the said court in bankruptcy, the petition of Southern Arizona Smelting Company, that it be adjudged bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Southern Arizona Smelting Company is hereby declared and adjudged bankrupt accordingly.

It is further ordered that all notices required to be published in the above-entitled matter, and all orders which the Court may direct to be published, be inserted in "The Arizona Daily Star," a newspaper published in the city of Tucson, county of Pima, State of Arizona, within the territorial district of this court, and in the county within which said bankrupt resides.

Dated September 29th, 1914.

WM. H. SAWTELLE,

District Judge.

[Endorsements]: B-9 Tucson. In the District Court of the United States for the District of Arizona. In the Matter of Southern Arizona Smelting Company, Bankrupt. Order of Adjudication and Designating Newspaper. Filed Sept. 29, A. D. 1914, at 11 A. M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. Filed Oct. 1, 1914, at 1:30 P. M. F. H. Bernard, Referee. [4]

*In the United States District Court for the District
of Arizona.*

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

JOHN H. MARTIN, as Trustee of the Estate of
Imperial Copper Company, a Corporation,
Bankrupt Petitioner,

vs.

M. P. FREEMAN, as Trustee of the Estate of
SOUTHERN ARIZONA SMELTING CO.,
a Corporation, Bankrupt Respondent.

**Stipulation [for Supplemental Transcript of
Record.]**

IT IS HEREBY STIPULATED by and between John H. Martin, as trustee of the estate of the Imperial Copper Company, a corporation, bankrupt, petitioner, by his counsel, Francis M. Hartman and E. F. Jones; and M. P. Freeman as trustee of the estate of the Southern Arizona Smelting Company, a corporation, bankrupt, respondent, that the clerk of the United States District Court for the District of Arizona, at Tucson, may send up to the Circuit Court of Appeals for the Ninth Circuit, sitting at the city of San Francisco, State of California, certified copy of the voluntary petition in bankruptcy filed in said United States District Court for the District of Arizona, at Tucson, by the said Southern Arizona Smelting Company, on the 29th day of September, 1914, and also certified copy of the order of adjudication

made and entered upon said petition by said Court upon said 29th day of September, 1914; and that said certified copies of said petition in bankruptcy and order of adjudication thereon be used to supplement and be made a part of and incorporated in the record in the above-entitled matter heretofore sent up to said Circuit Court of Appeals by the clerk of said United States District Court for the District of Arizona. [5]

Dated this 29th day of November, A. D. 1915.

FRANCIS M. HARTMAN,

E. F. JONES,

Attorneys for John H. Martin, Trustee of the Estate of Imperial Copper Co., a Corporation, Bankrupt, Petitioner.

ELLINWOOD & ROSS,

SELIM M. FRANKLIN,

Attorneys for M. P. Freeman, Trustee for the Estate of Southern Arizona Smelting Company, a Corporation, Bankrupt, Respondent.

[Endorsements]: In the United States District Court for the District of Arizona. B-9 Tucson. In the Matter of the Southern Arizona Smelting Co., a Corporation, Bankrupt. John H. Martin, as Trustee of Imperial Copper Company, a Corporation, Bankrupt, Petitioner, vs. M. P. Freeman, Trustee of Southern Arizona Smelting Co., a Corporation, Bankrupt, Respondent. Stipulation. Filed Nov. 29, 1915. George W. Lewis, Clerk. [6]

[Certificate of Clerk U. S. District Court to Supplemental Transcript of Record.]

In the United States District Court for the District of Arizona.

No. B-9—TUCSON.

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt,

JOHN H. MARTIN, as Trustee of the Estate of Imperial Copper Company, a Corporation, Bankrupt, Petitioner,

vs.

M. P. FREEMAN, as Trustee of the Estate of Southern Arizona Smelting Co., a Corporation,
Bankrupt,

Respondent.

MINUTE ENTRY MADE ON MONDAY, NOVEMBER 29th, 1915.

It is ordered that the clerk do forthwith prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, a true and correct copy of the voluntary petition, order of adjudication, stipulation requiring that said petition and order of adjudication be so transmitted, on file and of record in the above-entitled case, together with copy of this order, duly certified under his hand and seal of this court. [7]

[Order Directing Transmission of Supplemental
Transcript of Record.]

*In the United States District Court for the District
of Arizona.*

United States of America,
District of Arizona,—ss.

I, George W. Lewis, clerk of the United States District Court for the District of Arizona, do hereby certify the foregoing to be a true, perfect and complete copy of the voluntary petition, order of adjudication and stipulation requiring that said petition and order of adjudication be transmitted to the Circuit Court of Appeals for the Ninth Circuit at San Francisco, in the Matter of the Southern Arizona Smelting Company, a corporation, Bankrupt, No. B-9—Tucson, as the same appears from the original records of same on file in my office at Tucson, Arizona, together with order requiring same to be transmitted.

WITNESS my hand and the seal of said Court affixed hereto at Tucson, Arizona, this thirtieth day of November, in the year of our Lord, one thousand nine hundred and fifteen and of our Independence the one hundred and fortieth.

GEORGE W. LEWIS,
Clerk.

By Effie D. Botts,
Deputy. [8]

[Endorsed]: No. 2697. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. John H. Martin, as Trustee of the Estate of Imperial Copper Company, a Corporation, Bankrupt, Petitioner, vs. M. P. Freeman, as Trustee of the Estate of Southern Arizona Smelting Company, a Corporation, Bankrupt, Respondent. Supplemental Transcript of Record in Support of Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Arizona.

Received December 4, 1915.

F. D. MONCKTON,
Clerk.

Filed December 6, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.